

Application No. 10/623,370  
SD-7250.1

## REMARKS

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**Special Note:**

The following "Remarks" are identical to the Remarks previously submitted on July 13, 2007; however, with the following difference. The attached Revised, Supplemental Statement of Common Ownership in Appendix A is currently amended to correct an inadvertent mistake. The name of one of the true joint inventors, Robert H. Comstock, had been inadvertently and incorrectly written as "Robert H. Tucker". Applicants gratefully appreciate the Examiner pointing out this error.

Accordingly, this Statement is currently amended to replace the incorrect name "Robert H. Tucker" with the correct name, i.e., **Robert H. Comstock**.

**Claim Status:**

- Claims 2-9, 11, 17-20, 34, 35, 39-41 and 43-45 are pending.
- Independent claims 34 and 39 are cancelled in this amendment.

**Claim Amendments**

- Claims 9, 17 and 35 are currently amended.

**Claim Rejections – 35 USC §103(a)****Claims 2-9, 17-20, 35 and 43-45**

The Office rejected claims 2-9, 17-20, 35 and 43-45 under 35 USC §103(a) as being unpatentable over Tadros et al. (WO 01/02192 A1) in view of Nakagawa et al (3,901,819).

In the "Response to Arguments" dated 02/26/2007, the Office noted that Tadros WO discloses the use of sodium hypochlorite and/or calcium hypochlorite as oxidizing additives for decontamination formulations.

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In response, applicants have currently amended independent claims 17 and 35 by deleting calcium hypochlorite and calcium chloride from the Markush group of sorbent additives.

The remaining species of sorbent additives, i.e., dendritic salt, polyols, urea, and potassium bromide, are not taught or suggested by either Tadros or Nakagawa. Hence, a *prima facie* case of obviousness cannot be supported, and the rejection under 35 USC §103(a) should be withdrawn.

Accordingly, independent claims 17 and 35 are now in condition for allowance.

Claims 2-9, 18-20, and 43-45 depend from claim 17, and, hence, are also allowable.

Additionally, applicants voluntarily amended claim 9 by further limiting the concentration of sorbent additive to being 1-4%, while deleting the phrase "a sufficient amount of the sorbent additive."

#### Claims 11, 34, and 39-41

The Office rejected claims 11, 34, and 39-41 under 35 USC §103(a) as being unpatentable over Tadros et al. WO 02/02192 A1 in view of Nakagawa et al (3,901,819) and further in view of Huth et al. (6,448,062). Applicants respectively traverse.

Claims 34 and 39 are currently cancelled.

With respect to claim 11, it is applicants belief that the Office's obviousness conclusion is based upon impermissible hindsight derived from applicant's own specification and claims, rather than from some teaching, suggestion or motivation derived from the prior art.

Nakagawa teaches the use of O-acetyl and N-acetyl bleach activators, such as diacetin or TAED, for the purpose of making clothes brighter and whiter when washed using laundry detergents.

Tadros et al. WO teaches formulations for the neutralization of toxic chemical and biological warfare agents, but doesn't teach using O-acetyl and N-acetyl bleach activators.

The Office asserts that "*It would have been obvious to one of ordinary skill in the art to use the disclosure of Nakagawa et al to O-acetyl and N-acetyl bleach activators for*

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*inorganic peroxides, such as percarbonates, as motivation to actually add them as bleaching activators to the chemical and biological neutralization formulations taught by WO for the oxidation enhancement benefits such activators would provide for WO's oxidizing reactive component and the formulations as a whole."*

Applicant respectfully traverses. The Office has used impermissible hindsight to find separate elements of applicant's invention from disparate fields of non-analogous prior art. See MPEP 2141.01(a). Nowhere in the prior art is there a motivation, teaching or suggestion to combine the use of bleaching activators that make clothes "whiter and brighter" with formulations for the neutralization of toxic chemical and biological warfare agents. There is simply no overlap between the two different fields of art; they are non-analogous.

There is no teaching, not in Nakagawa, and (applicants submit) not in the general field of laundry detergents, that suggests the use of Nakagawa's bleaching activator would have a dramatically enhanced effect on the ability of Tucker's formulas for killing Anthrax spores or for neutralizing the toxic effects of VX nerve gas, for example. The office has failed to provide a convincing reason why the chemistry relating to how a particular ingredient (i.e., bleaching activator) that makes clothes whiter and brighter would, logically, also have an enhanced ability to inactivate/kill biological and chemical warfare agents.

Accordingly, claim 11 is allowable.

#### Claim 40

The Office rejected claim 40 under 35 USC §103(a) as being unpatentable over *Tadros et al. WO 02/02192 A1* in view of *Nakagawa et al (3,901,819)* and further in view of *Huth et al. (6,448,062)*. Applicants respectively traverse.

Claim 40 recites that the sorbent additive is **sorbitol**, as disclosed in applicant's Provisional Application Serial no. 60/397,424 filed 07/19/2002.

A revised, supplemental Statement of Common Ownership under 35 USC 103(c) is attached (See Appendix A), which has been updated to make a specific reference to the *Tadros* reference WO 02/02192 A1 as being commonly owned by Sandia Corporation. The provisional filing date of 07/19/2002 is only about 6 months after

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Tadros WO 02/02192 A1 was published on 01/10/2002. Therefore, because Tadros was published less than 1 year prior to applicant's effective filing date of 07/19/2002, it cannot be used as a proper "102(b) type" reference for use in 103(a) rejections.

Applicants submit that the provisions of MPEP 706.02 (I)(2) continue to afford a safe harbor under 35 USC 103(c) for any 103(a) rejections based on the Tadros WO reference.

Accordingly, claim 40 is now in condition for allowance; as well as it's dependent claim 41.

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### CONCLUSION

Applicants have responded to each and every objection and rejection, and urge that the claims as presented and amended are now in condition for allowance. Applicants request expeditious processing to issuance.

The Office is authorized to charge Deposit Account # 19-0131 for any necessary fees regarding this response, including a RCE fee of \$ 790.

Respectfully submitted,

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7/31/2007

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## APPENDIX A

### REVISED, SUPPLEMENTAL

#### Statement of Common Ownership under 35 U.S.C. 103(c)

As required to invoke the safe harbor provisions of 35 U.S.C. 103(c), as amended by the CREATE Act of 2004, the following Statement is provided.

A Cooperative Research and Development Agreement (CRADA) under the Stevenson-Wydler Act 15 (U.S.C. 3710) was signed June 21, 2001 between Sandia Corporation of Albuquerque, NM and EnviroFoam Technologies, Inc. of Huntsville, AL (hereinafter referred to as EFT, Inc.). This CRADA agreement qualifies as a Joint Research Agreement, as defined by 35 U.S.C. 103(c)(3). The original length of this Joint Research Agreement was 24 months, i.e., to June 21, 2003, but it was later extended by an additional 30 months until 12/21/2005.

During the period of time that this Joint Research/CRADA Agreement was in effect (i.e., from 6/21/2001 to 12/21/2005), the present invention was made by joint co-inventors Mark D. Tucker and Robert H. Comstock as a result of activities undertaken within the scope of the joint research agreement. At the time the invention was made, Dr. Tucker was an employee of Sandia Corporation; and Mr. Comstock was an employee of EFT, Inc. Hence, the claimed invention was made on behalf of the two parties (Sandia and EFT) to the Joint Research Agreement, which was in effect (6/21/2001) before the date the claimed invention was made (the provisional application 60/397,424 was filed 07/19/2002, and the invention disclosure was submitted to Sandia Corporation on 07/18/2002). The instant patent application has been amended to disclose the names of the two parties (Sandia and EFT, Inc.) to the joint research agreement.

The disqualified subject matter, *Tadros WO 02/02192 A1*, patent 6,566,574 to Tadros et al., and patent 6,723,890 to Tucker et al., were all made on behalf of Sandia Corporation, and were all owned by Sandia Corporation when the present invention was

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made. All of the co-inventors (Maher E. Tadros of Albuquerque, NM; Mark D. Tucker of Albuquerque, NM; and Rita G. Betty of Rio Rancho, NM were (and currently are) employees of Sandia Corporation, and all of them had (and currently have) obligations to assign their inventions to Sandia Corporation.

Accordingly, the instant application and the three disqualified prior art patents (WO 02/02192 A1 to Tadros et al., 6,566,574 to Tadros et al., and 6,723,890 to Tucker et al.) should be treated as if they are commonly owned for the purposes of examination under 35 U.S.C. 103 (c) (1).

Respectfully submitted,

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07/31/2007